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No. 02-765

IN THE

# Supreme Court of the United States

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STATE OF CALIFORNIA, CALIFORNIA HIGHWAY PATROL, DWIGHT HELMICK, and EDWARD GOMEZ,
*Petitioners*,

v.

JEFF D. PAIGE, *et al.*,
*Respondents*.

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

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## BRIEF IN OPPOSITION

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DELLA BAHAN
BAHAN & ASSOCIATES
128 North Fair Oaks Avenue
Pasadena, California 91103

WALTER KAMIAT
*Of Counsel*
3003 Van Ness Street, N.W.
Washington, D.C. 20008

DENNIS M. HARLEY
*Counsel of Record*
510 South Marengo Avenue
Pasadena, California 91101
(626) 796-7555

*Attorneys for Respondents*

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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v.

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## BRIEF IN OPPOSITION

## COUNTERSTATEMENT OF THE CASE

This is a class action race discrimination case brought pursuant to Title VII of the Civil Rights Act of 1964, as amended. Respondents are a class of all nonwhite California Highway Patrol officers who have been, are, or will be discriminated against on the basis of their race regarding the terms and conditions of their employment, including the denial of job assignments, transfers and promotions. The case has focused on promotional decisions taken by the California Highway Patrol during the relevant limitations period, based on selection devices which allegedly have a disparate impact on minorities.

Petitioners seek review of a Ninth Circuit decision in which a unanimous panel (Reinhardt, Kozinski &

Hawkins, JJ.) reversed the District Court's grant of summary judgment for Respondents on the issue of disparate impact, and rejected Petitioners' arguments that summary judgment on that issue should be awarded to them instead. In the words of the panel, "[b]ecause the parties offer conflicting inferences drawn from the evidence they each offered as to whether the use of [statistical data taken from] an internal pool [of available applicants] shows such a discriminatory effect, there is a genuine issue of material fact as to whether the promotional exams have a disparate impact, and this action must proceed to trial." Pet. App. 11a.

In the course of finding "genuine dispute[s] of material fact as to whether the promotional exams have a disparate impact," the unanimous panel discussed three "questions of law" raised by Petitioners that were "bound up in these factual questions." Pet. App. 11a-12a. In each instance, Petitioners argued that Respondents' proffered statistical evidence was insufficiently specific, *i.e.*, that it analyzed insufficiently narrow subsets of data concerning the challenged practices. The panel rejected Petitioners' contention that their legal theories would bar any relief regardless of the state of the factual (including statistical) evidence, recognizing instead that Respondents' proffered evidence raised sufficient questions for trial, and that, at trial, Petitioners' arguments would properly go to the relative weight of the parties' competing statistical theories. While ruling that Respondents' statistical evidence is not legally barred, the panel emphasized that "defendants are of course equally free to introduce whatever data they may deem appropriate" and to argue that favorable inferences be drawn from that data. Pet. App. 16a.

Despite the fact that Petitioners cite absolutely no prior decision of any court that adopts their legal theories, and despite the fact that they will have a full opportunity at trial to offer competing statistical evidence and to argue for

its greater probative force, Petitioners nonetheless mischaracterize the unanimous panel decision below as creating clear conflicts with the law of this Court and of other circuits, and as dangerously "licens[ing] a veritable orgy of aggregation . . . in what will become, if this Court does not grant review, a game of statistical 'gotcha' in Title VII claims . . . ." Pet. 28.

Nothing could be further from the truth.

The decision below is simply unexceptional. The Ninth Circuit's views on the permissible scope of statistical evidence in disparate impact cases are in complete harmony with the decisions of this Court and other federal courts, and with the regulations of the Equal Employment Opportunity Commission ("EEOC"). The decision below states no novel legal holdings. Certainly, it states no holdings that are either the subject of such ongoing deliberation in the federal courts of appeals, or otherwise of such novelty or import as to merit this Court's granting of certiorari review. The petition should be denied.

## ARGUMENT

### I. THE DECISION BELOW IS ENTIRELY CONSISTENT WITH ESTABLISHED LAW RELATING TO TITLE VII'S LIMITATIONS POLICIES, INCLUDING THIS COURT'S DECISIONS IN *NATIONAL RAILROAD PASSENGER CORP. V. MORGAN, DELAWARE STATE COLLEGE V. RICKS, AND UNITED AIR LINES, INC. V. EVANS.*

A. At the outset, it is worth noting the precise nature of the issue Petitioners raise regarding Title VII's limitations policies and the Ninth Circuit's disposition of that issue. Petitioners do not assert—and could not assert—that Respondents seek relief from time-barred employment decisions: all agree that Respondents seek relief only from decisions that occurred during the relevant limitations period and that their suit was timely filed. Rather, Petitioners assert

that Title VII's limitations policies go well beyond barring recovery for decisions taken outside the relevant limitations period and also bar recovery for decisions taken within that period, if proof of their discriminatory nature relies in part on evidence of statistical trends which commenced before the limitations period began. Petitioners fail to cite a single case that has held this to be the law.

Rather, the unanimous Ninth Circuit panel held only that evidence of statistical trends from outside the limitations period may be used when relevant to understanding employment practices that, because they occurred within the limitations period, are properly subject to challenge:

> [I]t is appropriate to admit pre-liability period data into evidence in a disparate impact case if promotional practices remain similar over a long period of time, as they have in this case. *See, e.g., Bouman v. Block*, 940 F.2d 1211, 1226 (9th Cir. 1991)[*cert. denied*, 502 U.S. 1005 (1991)] (allowing plaintiffs in a Title VII disparate impact case to aggregate results from multiple promotional exams because "courts have repeatedly looked at trends from past examinations to see if the total pass rate showed evidence of discrimination"); *Eldredge* [*v. Carpenters*], 833 F.2d [1334,] at 1339 n.7 [(9th Cir. 1987) (finding data in a Title VII disparate impact case "more complete and reliable" when aggregated over nine years than when shown year-by-year); *see also* [EEOC Uniform Guidelines on Employee Selection Standards ("Uniform Guidelines")] 29 C.F.R. § 50.14 at 4(d) (1977) (stating that in a Title VII disparate impact case, when the data indicate that a procedure has discriminatory impact, but the data set is too small to be reliable, plaintiffs may supplement data with evidence concerning the impact of the procedure over a longer period of time).

Pet. App. at 15a-16a.

As the Court of Appeals recognized, its holding was consistent with the EEOC's Uniform Guidelines[1] which are entitled to deference as the administrative interpretation of Title VII by the enforcing agency. *Griggs v. Duke Power Co.*, 401 U.S. 424, 433-34 (1971). Pet. App. 16a.

More importantly, the decision below is fully consistent with the positions of numerous other courts of appeals, which have frequently considered pre-limitations period selection data when that evidence is relevant to determining whether the same or similar practices within the limitations period have a disparate impact.[2] Thus, this case presents no conflict

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[1] Petitioners do not dispute that this is the EEOC rule, but contend instead that the EEOC only approves the use of older data where the statistical sample size would be too small if confined to the limitations period. In fact, the EEOC has never embraced the notion that the limitations period is a relevant restriction in this regard, and the EEOC rule makes no reference to the limitation period. 29 C.F.R. § 1607.4(D) (2002). Moreover, Respondents have submitted evidence, including expert opinion, that, as to certain of their statistical analyses, the sample size would be too small if limited to data within the limitations period. Excerpt of Record ("ER"), Vol. VII, 39 at 11-12. Petitioners ignore this. Of course, if this is the real matter in dispute in this case, it raises only a narrow factual question that hardly calls for this Court to grant a writ of certiorari.

[2] In each of the following cases, the court considered statistical evidence well beyond Title VII's limitations period to support a finding that the employment practice in question was discriminatory in nature. *See, Capaci v. Katz & Besthoff*, 711 F.2d 647, 655-56 (5th Cir. 1983), *cert. denied*, 466 U.S. 927 (1984) (data from 1965 to 1977); *Payne v. Travenol Laboratories, Inc.*, 673 F.2d 798, 820-21 & nn. 32-34 (5th Cir.), *cert. denied*, 459 U.S. 1038 (1982) (data from 1969 to 1974, which entirely predated the limitations period); *United States v. Lee Way Motor Freight, Inc.*, 625 F.2d 918, 929, 952 (10th Cir. 1979) (data from 1968 to 1974); *Grant v. Bethlehem Steel*, 635 F.2d 1007, 1017-18 (2d Cir. 1980) (data from 1970 to 1975); *Csicseri v. Bowsher*, 862 F. Supp. 547, 560-61 (D.D.C. 1994), *aff'd* 67 F.3d 972 (D.C.Cir. 1995) (data from 1984 to 1990); *Denny v. Westfield State College*, 669 F. Supp. 1146 , 1148 (D. Mass. 1987) (data from 1974 to 1984), *aff'd other grounds*, 880 F.2d 1465

between or among the circuits that would call for this Court's grant of a writ of certiorari.[3]

B. Nonetheless, Petitioners argue that the decision below is "fundamentally inconsistent with the rationale underlying this Court's decisions" on the limitations policies of Title VII, citing *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), *Delaware State College v. Ricks*, 449 U.S. 250 (1980), and *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977). Pet. at 15. In fact, it is Petitioners who propose an approach to Title VII limitations policy that is "fundamentally inconsistent" with these decisions.

1. All three of the cited cases involve the administration of Title VII's limitations period, which is stated at 42 U.S.C. §2000e-5(e)(1).[4] *Morgan* explained that this section "is a

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(1st Cir. 1989); *Freeman v. Package Machinery Co.*, 865 F.2d 1331, 1334, 1338-39 (1st Cir. 1988) (data showing pattern over two decades).

[3] The only court of appeals decision that Petitioners even argue is in conflict with the decision below is *Ste. Marie v. Eastern Railroad Ass'n*, 650 F.2d 395 (2d Cir. 1981), a disparate treatment case which noted (as did this Court in *Hazelwood School District v. United States*, 433 U.S. 299, 309-10 (1977)) that a static comparison of workforce representation rates can misleadingly suggest ongoing discrimination where the present racial imbalance results from time-barred employment decisions that are of no demonstrated relevance regarding current employment practices. *Compare International Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 n.20 (1977) ("Evidence of long-lasting and gross disparity between the composition of a workforce and that of the general population thus may be significant . . . ."). The court in *Ste. Marie* did not exclude such evidence, but found plaintiffs' statistics flawed because they included data regarding the failure to promote clearly unqualified individuals. *Id.* at 401. Here, Respondents' statistical analyses do not rely on static workforce comparisons but instead compare the rates at which whites and minorities are promoted as evidence that the selection devices used during the limitations period have a disparate impact on otherwise qualified minorities.

[4] Section 2000e-5(e)(1) provides that "(1) A charge under this section shall be filed within one hundred and eighty days after the alleged

charge filing provision that 'specifies with precision' the prerequisites that a plaintiff must satisfy before filing suit." 536 U.S. at 119 (quoting *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47 (1974)). The section "requires that a Title VII plaintiff file a charge with the Equal Employment Opportunity Commission (EEOC) either 180 or 300 days 'after the alleged unlawful employment practice occurred.'" *Id.* at 116 (quoting §2000e-5(e)(1)). The section's purpose is "to encourage the prompt processing of all charges of employment discrimination" by employees seeking a remedy for an alleged unlawful employment practice. *Id.* at 119 (citation and internal quotation marks omitted). "The critical questions [in applying this provision], then are: What constitutes an 'unlawful employment practice' and when has that practice 'occurred'?" *Id.* at 120. And *Morgan* makes clear that the term "unlawful employment practice" refers to such discrete adverse acts against a plaintiff as a discharge, a refusal to hire or promote, or a payment of discriminatory compensation. *Id.* at 120-21 (discussing 42 U.S.C. §2000e-2(a)).

*Morgan, Ricks* and *Evans* all understand Title VII's limitations provision in this manner. In other words, they interpret the provision to bar relief from a discrete adverse "unlawful employment practice" that occurred outside the limitations period. None of these cases apply the provision to exclude evidence of selections made prior to the limitations

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unlawful employment practice occurred . . ., except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier . . . ."

period that might be highly relevant to determining whether employment practices within the limitations period were discriminatory in nature. Yet that is precisely the use to which Petitioners seek to put this body of law. Petitioners can cite no case that has done so.

2. *Morgan* discusses prior Supreme Court precedents in terms that are wholly consistent with the decision below, and emphasizes that arguably discriminatory employment practices prior to the beginning of the limitations period "'may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue'" so long as the emphasis is on "'whether any present violation exist[s].'" *Id.* at 121 (quoting *Evans*, 431 U.S. at 558). Thus, when relief is sought only for a discrete "employment practice" that "occurred" within the limitations period, the action is timely, even when the challenged act has a connection to other, pre-liability period acts. "Each discrete discriminatory act starts a new clock for filing charges alleging that act." *Id.* at 122.

3. Indeed, *Morgan* demonstrates that the holding below creates no tension with this Court's precedents.

*Morgan* involved the application of Title VII limitations principles to discrimination claims alleging a hostile environment, a Title VII theory under which the context created by a pattern of related prior workplace acts can be found discriminatory, even if the most recent act, standing alone, might not be of sufficient gravity to be independently actionable. *Id.* at 122-23.

The controversy in *Morgan* concerned whether a plaintiff seeking relief under this theory could obtain recovery for otherwise time-barred acts that, together with the more recent acts, constituted the ongoing hostile environment. The Court majority held that as long as "any act that is part of the hostile work environment" occurred during the limitations period,

plaintiff could recover for all related acts, as "the entire hostile work environment encompasses a single unlawful employment practice." *Id.* at 125. In contrast, the dissent argued that recovery should be limited to those acts that occurred within the limitations period, even if their unlawful nature depended on a showing that they were part of a longer-term discriminatory pattern.[5]

Neither of the opinions in *Morgan* argued that Title VII limitations policies bar the evidentiary use of acts outside the limitations period to show the discriminatory nature of acts within that period. Indeed, such a position—which is the essence of Petitioners' position here—is inconsistent with the approaches of both the *Morgan* majority and the *Morgan* dissent.

Respondents here seek relief solely for employer acts taken *within* the limitations period, a far more modest position than that of the plaintiffs in *Morgan*. As the Court of Appeals recognized—when it unanimously rejected Petitioners' petition for rehearing, which largely relied on *Morgan*—nothing in *Morgan* is in tension with the decision below.

4. Petitioners' confusion about Title VII's limitations policies can best be illustrated by reference to their reliance on language from *Evans*: "'[a] discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed . . . . [i]t is merely an unfortunate event in history which has no present legal consequence.'" Pet. 15 (quoting

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[5] "Although a hostile environment claim is, by its nature, a general atmosphere of discrimination not completely reducible to particular discriminatory acts, each day the worker is exposed to the hostile environment may still be treated as a separate 'occurrence,' and claims based on those occurrences forfeited. In other words, a hostile environment is a form of discrimination that occurs every day; some of those daily occurrences may be time barred, while others are not." *Id.* at 129 (O'Connor, J., dissenting).

*Evans*, 431 U.S. at 553; omissions as in Petition). On this basis, Petitioners argue that selections made prior to the limitations period cannot, as a matter of law, be included in the data used to evaluate the present legal consequence of a current employment practice.

But this Court has never understood *Evans* as protecting employers if they allow pre-Act or pre-limitations period discrimination to infect more recent employment decisions. Certainly the Court has never prohibited the use of pre-Act or pre-limitations period data to evaluate the nature of employment practices that occur within the limitations period which are then made the subject of a timely charge by an adversely affected employee. Quite the contrary.

The Court has made this point explicit in precisely the context of Petitioners' analogy, the use of evidence of pre-Act discrimination to challenge similar current practices. In *Bazemore v. Friday*, 478 U.S. 385 (1986), the Court rejected a court of appeals holding that, under the rationale of *Evans*, an employer's current pay practices could not be challenged by showing that they were discriminatorily adopted prior to the effective date of the statute. In the Court's words, "[w]hile recovery may not be permitted for pre-1972 acts of discrimination, to the extent that this discrimination was perpetuated after 1972, liability may be imposed. Each week's paycheck . . . is a wrong actionable under Title VII, regardless of the fact that this pattern was begun prior to the effective date of Title VII." *Id.* at 395. Moreover, "to establish discrimination with respect to salary disparities created after 1972, . . . evidence of pre-Act discrimination is quite probative." *Id.* at 402, n.13. This is "'particularly [so] where relevant aspects of the decisionmaking process had undergone little change.'" *Id.* at 402 (quoting *Hazelwood*, 433 U.S. at 309-10, n.15). The reasoning of the Ninth Circuit's decision here is no different. *See* Pet. App. 15a ("[I]t is appropriate to admit pre-liability period data into

evidence in a disparate impact case if promotional practices remain similar over a long period of time, as they have in this case.").

The overall pattern of Supreme Court treatment of Title VII limitations policy runs entirely against the extreme implications of Petitioners' position that the statute of limitations should bar statistical evidence of prior employment patterns. The limitations periods applicable to Title VII claims are recognized as "'obviously quite short deadlines.'" *Morgan*, 536 U.S. at 16 (quoting *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980)). This corresponds to their purpose of encouraging the prompt filing of discrimination claims. *Morgan*, 536 U.S. at 16. If their purpose were expanded to bar the use of statistical evidence from outside the limitations period, individuals who promptly filed their claims would nonetheless often be unable to prove the discriminatory nature of the actions taken against them because the number of decisions made during the liability period would be too small. *See, e.g., Teamsters*, 431 U.S. 324, 339 n.20 (small sample size may detract from evidentiary value of statistical evidence).[6] Statistical challenges to

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[6] An employment practice may not generate enough selection data within a 180 or 300 day period to permit valid statistical conclusions to be drawn about its impact on a protected group. Especially where, as here, an employer uses the results of a discriminatory test over a period of time, the illogic of Petitioners' proposed data-limitations rule is clear. As Petitioners admit, "During the time period relevant to this case, the CHP gave the promotional examinations for each rank at roughly two-year intervals . . . Each eligibility list remained effective until the next promotional examination was administered and a new, superseding list generated." Pet. 6. Under Petitioner's theory, a party could not use selection data from the entire life of a promotional list, either to prove or to disprove disparate impact. This artificial restriction on the data for statistical analysis might, for example, exclude white candidates who were disproportionately clustered at the top of the list and promoted before the limitations period began, or otherwise mask disparate impact which could be shown by analyzing the results of the entire promotional cycle.

discriminatory employment systems would become far more difficult to prove, and unlawful employment practices of the past would far more easily be perpetuated into the future. Nothing in the statute or its interpretation by this or any other court supports such results.

## II. THE DECISION BELOW COMPORTS WITH UNIFORM DECISIONAL LAW ON THE USE OF "AGGREGATED" STATISTICS IN TITLE VII CASES.

A. Petitioners also challenge the Ninth Circuit's holding that, at trial, Respondents may introduce statistical analyses which use data from different promotional test administrations and data reflecting selection rates of the entire plaintiff class, while Petitioners will be "equally free to introduce whatever data they may deem to be appropriate, subject to the further rulings of the district court." Pet. App. 16a.[7] There is nothing unusual about this approach. As this Court explained in *Hazelwood*,

> [S]tatistics . . . come in infinite variety . . . .Their usefulness depends on all of the surrounding facts and circumstances.' Only the trial court is in a position to make the appropriate determination after further findings.

433 U.S. at 312 (quoting *Teamsters*, 431 U.S. 324, 340). *See Hazelwood*, 433 U.S. at 308 n.13 (aggregating various types of public school teacher positions for purposes of analysis).

The use of aggregated data of different sorts in Title VII cases has been allowed throughout the circuits. *See, e.g.*,

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[7] As is frequently true, Respondents' analyses using aggregated data are among alternative analyses offered as evidence. Respondents also demonstrated the disparate impact of certain selection devices by analyzing discrete supervisory ranks, specific test administrations, and different minority groups separately. ER Vol. IV, 32 at 9; VII 39 at 5, 8, 10-11, 15. *See also* ER Vol. VII, 39 at 7-8.

*Ezell v. Mobile Housing Bd.*, 709 F.2d 1376, 1382 (11th Cir.1983) (data from 29 different tests); *Capaci*, 711 F.2d at 655 (twelve years of data from different geographic locations); *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 564-65 (8th Cir. 1982), *cert. denied*, 460 U.S. 1083 (1983) (data concerning different positions); *Gomes v. Avco Corp.*, 816 F.Supp. 131, 136 (D. Conn. 1993) (data from four companies); *Denny*, 669 F. Supp. at 1149-50 (data from different university departments); *Vulcan Pioneers, Inc. v. New Jersey Department of Civil Service*, 625 F. Supp. 527 (D.N.J. 1985), *aff'd other grounds*, 832 F.2d 811 (3d Cir. 1987) (different tests in different municipalities; analysis of total minority pass rates).[8]

Indeed, each of the cases cited by Petitioners also allowed studies based on aggregated data to be used as evidence, although at times such evidence was ultimately found persuasive and at times it was ultimately found unpersuasive. *See Maddox v. Claytor*, 764 F.2d 1539, 1555 (11th Cir. 1985) (treating the aggregated nature of data as going to its probative value and stating that "[t]he weight of all the relevant evidence is for the district court in the first instance"); *Valentino v. United States Postal Service*, 674 F.2d 56, 65 & n.10 (D.C. Cir. 1981) (admission of pre-liability period

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[8] The Ninth Circuit's decision is also consistent with leading treatises. *See* Ramona L. Paetzold & Steven L. Willborn, *The Statistics of Discrimination* §§ 4.17, 5.08 & n.4 (1996 & Supp. 1) (data may need to be combined or pooled across strata in order to yield a summary inference; suggesting that stratification should be upheld only if the employer can demonstrate that "the stratification is appropriate, and that the stratifying variable is business justified"); David C. Baldus & James W.L. Cole, Ph.D., *Statistical Proof of Discrimination*, § 4.12 (1980) (discussing appropriateness of analyzing the effect of an entire system rather than its component parts); 1. B. Lindemann & P. Grossman, *Employment Discrimination Law* 105 (3d ed. 1996) (aggregation of different years, tests, job categories and departments has been permitted in disparate impact cases where sample size is small).

evidence relating to promotional system was appropriate; plaintiffs' analysis was admitted but found not persuasive because it failed to control for education and job classification; analysis "might have been impressive" where comparison groups held similar jobs); *Cooper v. Southern Co.*, 205 F.R.D. 596, 612, 614 (N.D. Ga. 2001) (expert used pooled data concerning employees who were promoted by multiple means; court rejected argument that it is improper to combine data from both progressive and competitive promotions for analysis "because both types of promotions involve evaluative choices by management"); *Csicseri*, 862 F.Supp. at 564 (stating that "both experts engaged in mathematical acrobatics and statistical juggling" but defendants' expert was "more credible"); *Simmons v. City of Kansas City*, 1992 U.S. Dist LEXIS 20231, at *11-12, *14-15 (D. Kan. 1992) (plaintiffs' statistical analysis was admitted into evidence but found to be "unpersuasive"; court cited with approval defense analysis which grouped promotions for each testing period).

Here, Respondents' statistical analyses using aggregated data are supported, *inter alia*, by: (1) evidence that the scrutinized selection devices are similar and their aggregation is therefore justified, (2) a class definition which includes all minorities, justifying analysis of minorities as a group,[9] and (3) other statistical analyses, using less aggregated data

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[9] Petitioners' reliance on *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989) is misplaced. Indeed, *Wards Cove* did not criticize the use of data which, as here, grouped the entire plaintiff class of nonwhites. Rather the case was concerned that a plaintiff specify the particular "employment practice" he or she seeks to challenge. Here, Respondents have identified the sergeants, lieutenants, and captains promotional selection processes, and specific components of those processes, as having a disparate impact on minorities as a class, and on specific minority groups in isolation. Whether a plaintiff's statistical analyses used to prove the discriminatory nature of *specified* employment practices must meet a further level of refinement as a matter of law was not the subject of *Wards Cove*.

(*i.e.*, data refined by test component and individual minority group) which corroborate the results. *See* note 7, *supra*. Deciding which party's statistical evidence is more persuasive requires the resolution of disputed factual issues at a trial. It is not a matter which merits this Court's preemptive review.

## CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DELLA BAHAN-
BAHAN & ASSOCIATES
128 North Fair Oaks Avenue
Pasadena, California 91103

WALTER KAMIAT
*Of Counsel*
3003 Van Ness Street, N.W.
Washington, D.C. 20008

DENNIS M. HARLEY
*Counsel of Record*
510 South Marengo Avenue
Pasadena, California 91101
(626) 796-7555

*Attorneys for Respondents*